MC 3980/2007
BEFORE
HON'BLE THE CHIEF JUSTICE J.CHELAMESWAR
HON'BLE MR. JUSTICE A. POTSANGBAM
(Chelameswar,CJ)
The present misc. case is filed with the prayer as follows:-
\It is therefore humbly prayed that Your Lordships may be graciously pleased to declare decision to place the Report as illegal and wrongful one and/or issue in junction and/or any other restrain order restraining the Opposite Parties from laying down the purported report of Hon'ble Mr. Justice (Retd.) K.N.Saikia to the august Assembly.\

In fact, the writ petition itself is filed with the prayer as follows:
\It is therefore humbly prayed that Your Lordships may be graciously pleased to admit this petition, call for records, issue a rule calling upon the respondents to show cause as to why:
i) A writ in the nature of Certiorari or any other writ, direction or order of the like nature to quash the notification marked as Annexure 6, Annexure 7, Annexure 8(a, b, c & d), and Annexure 10 and also the purported report if submitted in the meantime.

ii) A writ in the nature of Mandamus commanding the Respondent No.1 not to lay any report of Justice K. N. Saikia Commission without deciding the fate and consequent result and action of Justice J. N. Sarma Commission report by the Assam Legislative Assembly and not to embark upon inquiry which has not been referred under Section 3(1). To command, to cancel, forbear and not to give effect of the notification marked as Annexure 6, Annexure 7, Annexure 8 (a, b, c & d), and Annexure 10 and also the purported report if submitted in the mean time.
-AND-
After hearing of the cause or causes that may be shown Your Lordship may be graciously pleased to make the rule absolute.
-AND-
Your writ petitioner further prays pending hearing of the writ petition all further proceeding including the laying down of any report of Justice K. N. Saikia Commission may kindly be stayed.\

It may not be necessary to go into the complete details to the various legal submissions made except to indicate the substance of the case.
The State of Assam appointed a Commission of Inquiry under the provisions of Commission of Inquiry Act, 1952 to enquire into the killings of 11 named persons mentioned in the Notification dated 4.11.2003 and the scope of the Inquiry and the terms of the Reference are indicated in the Notification. It appears that pursuant to the Notification, the Commission headed by Justice J. N. Sarma, a retired Judge of this Court, submitted a Report some time past. However, the said report is not placed before the Legislative Assembly of the State of Assam so far. We are informed that the Commission of Inquiry headed by Justice JN Sarma was terminated.
While the matter stood thus, by another Notification dated 22nd August,2005, the State of Assam, once again, constituted another Commission of Inquiry. This time headed by Shri K.N.Saikia, a retired Judge of the Supreme Court, to enquire into the killings of 11 named person in the said notification. It is to be mentioned here that names of 11 persons mentioned in the 2nd Notification are the same as those contained in the 1st Notification. Apart from that various other terms and conditions of the Reference are also identical. However, by another Notification dated 3rd September,2005, the State of Assam ordered that the Commission of Inquiry headed by Shri K.N.Saikia shall enquire into any other incidents of killings under similar circumstances, which occurred during the period from January,1998 to 2001. The relevant portion of the said Notification reads as follows:
\No.PLA.331/2005/2: In continuation of the earlier Notification No.PLA.331/2005/1 dated 22.08.05, the Governor of Assam is pleased to order that the Commission

of Inquiry headed by Shri K.N.Saikia, Hon'ble Justice (Retd.) of Supreme Court of India shall enquire into any other incidents of killings under similar circumstances which occurred during the period from January,1998 to 2001. It shall also enquire into the alleged attempted murder of Shri Ananta Kalita of Hajo under the same terms and conditions as stipulated in the notification under reference.\

Challenging the constitution of the Commission of Inquiry headed by Justice K.N. Saikia under the above referred two References, the present writ petition came to be filed with the prayer already extracted above.

It appears that a Public Interest Litigation is pending before the Supreme Court and we are informed that in the same writ petition a prayer was made before the Supreme Court seeking a direction to the Central Bureau of Investigation to investigate into the killings of certain persons including the killings of 11 persons which is the subject matter of the Commission of Inquiry before both the Commissions referred to earlier.

During the course of the proceedings before the Supreme Court in the abovementioned Public Interest Litigation i.e., WP(C) 56/06, the Supreme Court by an order dated 12.10.2007 ordered as follows:

\We have heard learned counsel for the parties at length. Considering the facts and circumstances of the case and as the Incident had taken place in the year 1999, we feel that we should ask for a status report from the State of Assam so far as the steps that have been taken place upto this period within four weeks from this date. It is also expected that the report of the Saikia Commission will be submitted before the Legislative Assembly at an early date.

Let the matter be listed in the last week of November,2007.\

In the meanwhile, basing on certain newspaper report, the petitioner apprehends that the report of Justice K.N. Saikia Commission is going to be placed before the Legislative Assembly. Hence, the present misc. application.

The prayer made in the writ petition more particularly in the second paragraph of the prayer is that unless the fate and consequent result and action of Justice JN Sarma Commission is decided by the Legislative Assembly, the respondents be restrained from placing the report of the latter Commission headed by Justice KN Saikia before the Legislative Assembly.

During the course of hearing, learned Advocate General appearing for the State of Assam submitted that the Government undertakes to place both the reports of Justice JN Sarma Commission as well as Justice KN Saikia Commission simultaneously before the Legislative Assembly.

In view of the undertaking given by the learned Advocate General, learned counsel for the petitioner agreed for the disposal of the writ petition as well as misc. case without any further orders. However, with a prayer that the petitioner be given the liberty to pursue his remedies if he is so advised after the contents of the reports are made public and if the petitioner perceives any injury from such reports.

We, therefore, dispose of the writ petition as well as the misc. case on the basis of the undertaking given by the learned Advocate General with liberty to the petitioner, as prayed for.